

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Second Appeal No. 1289 of 2001
(Old No.1318 of 1991)

1. Sri Sunder Lal Sah
S/o Sri Parama Sah (deceased)
 - 1/1 Smt. Pushpa Sah aged about 70 years
W/o Late Sri Sunder Lal Sah
 - 1/2 Manoj Sah, S/o Late Sri Sunder Lal Shah
aged about 45 years
both R/o Devi Niwas, Tallital, Nainital
 - 1/3 Smt. Jyoti Sah, aged about 49 yrs
D/o Late Sri Sunder Lal Sah, W/o Sri R.P. Sah
R/o D-21 Nirala Nagar, Lucknow
 - 1/3 Smt. Meeta Sah aged about 40 years
D/o Late Sri Sunder Lal Sah
W/o Sri Vinay Sah, R/o Classic Apartment
Swaroopnagar, Kanpur
 2. Sri Mukul Sah, S/o Sri Sundar Lal Sah (deceased)
 - 2/1 Smt. Kiran Sah W/o Late Sri Mukul Sah
Aged about 48 years
 - 2/2 Km. Yashodhara Sah, aged about 19 years
D/o Late Sri Mukul Sah
Both R/o Devi Niwas Tallital, Nainital
 - 2/3 Smt. Neha Verma aged about 27 years
W/o Sri Manish Verma
R/o 129 Sector 17, Gurgaon Haryana
 3. Sri Manoj Sah
S/o Sri Sunder Lal Sah
All residents of Devi Niwal Talli Tal
Nainital
- ...Appellants

Vs

Sri Vijay Chandra Sah
S/o Sri B.D. Sah
R/o Phansi Gahera
Tallital Nainital

....Respondents

Sri P.C. Maulkhi, learned counsel for the appellants

Hon'ble B.C. Kandpal, J.

This second appeal has been filed by the appellants against the judgment and decree dated 09.05.1991 passed by IInd Additional District Judge, Nainital in Civil Appeal No. 76 of 1989 arising out of judgment and decree dated 05.08.1989

passed by Munsif, Nainital in Original Suit No. 39 of 1985 whereby the suit was decided in favour of the respondent.

2. Brief facts of the case are that the appellants are the landlord of the Garage No. 19 which is situated at Fansi Gahera, Tallital, Nainital in which the respondent – Vijay Chandra Sah was a tenant @ Rs. 500/- per year since 1975. Both the parties are relative. The tenant/respondent had taken a loan in order to maintain the Garage. The respondent opened the workshop in the said Garage and spent lot of money in order to maintain the same. The appellants did not give any receipt of rent to the tenant, therefore, they want to dispossess the respondent forcefully from the said Garage. Therefore, the plaintiff/respondent filed a suit before the court of Munsif, Nainital.

3. The appellants denied the pleadings of the respondent and contested the suit and filed its written statement. The appellants has pleaded that the respondent is not the tenant of the disputed garage. The respondent runs his workshop outside the garage. They have further pleaded that in the year 1984 the appellants sold their old car and in the year 1985 they have purchased their new car and during that period the respondent was doing maintenance of the garage. They have further pleaded that when the appellants told the respondent to vacate the garage, thereafter, he filed the suit before the Munsif Court, Nainital.

4. On the basis of the pleadings of the parties, the court below framed following issues:-

1. Whether the respondent is a tenant in the shop/garage in question @ Rs. 500/- per year?

2. Whether the appellants granted some part of the garage in order to keep some tools and in fact, the garage in question was in possession of the appellants?
3. Whether the respondent/tenant did not spend any amount for maintaining the garage? If yes, its effect?
4. Whether the appellants forcefully tried to dispossess the tenant/respondent from the garage?
5. Whether suit was devalued and insufficient court fee has been paid?
6. Whether the trial has a right to hear this suit?
7. To what relief, the plaintiff is entitled to get?

5. The Court below after having considered the arguments advanced by learned counsel for both the parties and after having perused the entire evidence on record, allowed the suit of the respondent/tenant vide judgment and decree dated 05.08.1989.

6. Feeling aggrieved by the aforesaid judgment and decree, the appellants preferred an appeal before the 2nd Additional District Judge, Nainital which was also dismissed vide judgment and decree dated 09.05.1991.

7. Heard Sri P.C. Maulkhi, learned counsel for the appellants and perused the record.

8. The plaintiff's case is that he is the tenant in the disputed garage @ Rs. 500/- per year for the last 10 years whereas the defendants case is that they have never let out the garage to the plaintiff. Sunder Lal Sah (D.W.1) and Harish Chandra (D.W.2) in their statements have deposed that

the disputed garage was given to the plaintiff in the year 1977 for keeping his tools and before it the same was in the possession of the defendants. The plaintiff filed a paper No. 31-C (Ext. 1) which was given to the District Magistrate, Nainital on 17.09.1983 for allotment of the land in his favour. The defendants wanted to allege that the plaintiff was not in possession of the garage, hence he removed this application before the District Magistrate. The trial court as well as the first appellate court concluded that the defendant cannot get benefit of this fact because the plaintiff wanted to expand his business. Hence, he wanted to file the said application.

9. It has also come in the evidence that the plaintiff was sanctioned loan by Bank of Baroda for expansion of his business and the loan was sanctioned on the guarantee of the disputed garage in which he was shown as tenant and was running his workshop.

10. The judgment and decree passed by the courts below show that the courts below have discussed all the factual aspects and the evidence relating to the relevant facts involved in this case. The factual aspect is not to be interfered with in the second appeal. I also do not find any substantial question of law in the instant case.

11. The second appeal lacks merit and is liable to be dismissed.

12. Accordingly, the second appeal is dismissed in-limine.

(B.C. Kandpal, J.)

22.09.2006

ASWAL